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E-filed November 16th, 2006

9 UNITED STATES BANKRUPTCY COURT
10 DISTRICT OF NEVADA

11 IN RE:
12
13 SCOTT K. GREENE.

CASE NO. BK-N-05-54727-GWZ
CHAPTER 7

**TRUSTEE'S REPLY TO OPPOSITION
TO MOTION FOR ORDER
AUTHORIZING SALE OF REAL
PROPERTY FREE AND CLEAR OF
LIENS AND ENCUMBRANCES;
POINTS AND AUTHORITIES**

14 Debtor.

Hearing Date: November 21, 2006
Hearing Time: 10:00 a.m.

15 _____/
16 Anabelle Savage, the duly appointed Chapter 7 trustee ("Trustee") in the above-captioned
17 case, by and through her attorney, William D. Cope, Esq., of Cope & Guerra, hereby replies to
18 the opposition ("Opposition") to her Motion for Order Authorizing Sale of Real Property Free
19 and Clear of Liens and Encumbrances, which Opposition was filed by debtor, Scott K. Greene
20 ("Debtor"), as follows:

POINTS AND AUTHORITIES

21 The Debtor filed a Chapter 13 case in this court on or about August 27, 2004. Such case
22 was subsequently dismissed. The Trustee respectfully submits that the matters that occurred in
23 the Chapter 13 case are not relevant with respect to the present case and/or the sale of the
24 Debtor's real property located at 450 Alamosa, Reno, Nevada ("Property"). The Debtor filed the
25 present Chapter 7 case on October 15, 2005.

26 The Debtor purchased the Property in 1994. On August 11, 2004 the Debtor moved onto
27 the Property and recorded a homestead against the Property pursuant to applicable Nevada law.
28 When the Debtor filed this case he scheduled the value of the Property to be \$240,000.00 which

1 was the same value that he scheduled for the Property when he filed the Chapter 13 case in
 2 August of 2004. Oddly, when filing this case the Debtor did not take into consideration any
 3 increase in value that would have accrued as a result of the strong market in the Reno, Nevada
 4 area.

5 The Property is currently in escrow, as described in the Trustee's motion, to be sold for
 6 \$370,000.00 pending court approval. The purposed sale is set to close on November 30, 2006.

7 **LEGAL DISCUSSION**

8 **The proceeds from the sale of the Property, less costs of sale, payment of secured**
 9 **debt and payment of the Debtor's \$125,000.00 homestead exemption, should be property of**
 10 **the estate.**

11 This Court previously ruled in this case, among other things, that § 522(p)(1) of the
 12 Bankruptcy Code limits the Debtor's homestead exemption to \$125,000.00. See *In re Greene*,
 13 346 B.R. 385 (Bankr. D. Nev. 2006).

14 The Bankruptcy estate should net approximately \$145,000.00 from the sale of the
 15 Property.¹ The Debtor, however, argues that the appreciation of the value of the Property from
 16 August 2004 is not property of the bankruptcy estate. However, the cases cited by the Debtor for
 17 such proposition do not apply to the case at hand. For example, in the cases of *In re Blair*, 334
 18 B.R. 374 (Bankr. M.D. Fla. 2006) and *In re Sainlar*, 344 B.R. 669 (Bankr. N.D. Tex. 2005) the
 19 debtors therein claimed homesteads more than 1215 days prior to the filing of the bankruptcies.
 20 Thus, § 522 (p) did not apply, whereas that code section clearly does apply in this case.

21 Likewise, the case of *In re Rasmussen*, 349 B.R. 747 (Bankr. M.D. Fla. 2006), also cited
 22 by the Debtor, focuses mainly on the issue of stacking of homestead exemptions for married
 23 debtors. In *Rasmussen* the court found that § 522(p) did apply but that the debtors had separate
 24 homestead exemptions of \$125,000.00 apiece which could be stacked for a maximum homestead
 25 exemption of \$250,000.00 to protect the property at issue and that no excess equity existed over
 26 the stacked homesteads. *Id.*

27 Strangely, after ruling that there was no equity in the Property in excess of the stacked
 28 homestead amounts and thus no value in the property for the trustee to administer, the *Rasmussen*

¹ Sale price:	\$370,000
Minus approximate secured debt:	\$77,000
Minus approximate real estate costs of sale:	\$22,200.00
Minus the Debtor's Homestead exemption:	<u>\$125,000.00</u>
Approximate balance of sale proceeds:	\$145,880.00

1 court went on to address the debtors' moot contention that "post acquisition appreciation" should
 2 not be property of the bankruptcy estate. *Id.* Although, the plain language of § 522(p) and the
 3 legislative intent clearly provide to the contrary², the court suggested that appreciation in value
 4 of a property should be added to the \$125,000.00 cap established by § 522(p) as part of the
 5 homestead exemption. The Trustee respectfully submits that the *Rasmussen* court's analysis is
 6 incorrect on its face, does not apply to this case and the Trustee concurs with and incorporates
 7 herein by reference the well reasoned arguments pertaining to *Rasmussen* set forth in the reply to
 the Opposition filed herein by creditor, Reina Wells ("Wells").

8 Finally, as also mentioned in Wells' reply to the Opposition, the Debtor completely
 9 ignores the application of *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000) which case confirms,
 10 in the Ninth Circuit, that post petition appreciation in the value of real property is property of the
 11 estate. See also *In re Alsberg*, 68 F.3d 312, 314-15 (9th Cir. 1995); *In re Hyman*, 967 F.2d 1316,
 1321 (9th Cir. 1992); *In re Reed*, 940 F.2d 1317,1323 (9th Cir. 1991).

12 CONCLUSION

13 Based upon the forgoing, the Trustee respectfully requests that the Court approve her
 14 motion and rule that the estate is entitled to all proceeds of the sale of the Property after payment
 15 of the Debtor's homestead, costs of sale and secured claims.

16 DATED this 16th day of November, 2006.

18 COPE & GUERRA

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21 William D. Cope, Esq. Attorney
 22 for Trustee, Anabelle Savage

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 28 ² See, e.g. Legislative History referenced in the Opposition.